

Section 3 of the Illinois Use Tax Act, 35 ILCS 105/3, imposes a tax upon the privilege of using in this State tangible personal property purchased at retail from a retailer. (This is a GIL).

August 30, 2000

Dear Xxxxx:

This letter is in response to your email message dated August 7, 2000 to Keith Staats. Mr. Staats has asked that I respond to your message. The nature of your message and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c) which can be accessed at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter, you have stated and made inquiry as follows:

My name is PERSON and I am in house counsel for COMPANY and its subsidiaries including BUSINESS. Recently, BUSINESS received several notices for payment of taxes and finally a 10 day demand letter for the payment of taxes and penalties regarding a vehicle transferred from another COMPANY subsidiary to BUSINESS. Illinois is requesting a sales tax on the vehicle unless BUSINESS can show that it has already paid a sales tax in its original state of domicile, STATE. The vehicle was purchased in August of 1991 for \$10,000 and delivered immediately to STATE. From August of 1991 until October of 1999 vehicle was legally titled in the state of STATE under CORPORATION, also a subsidiary of COMPANY. In October of 1999 CORPORATION transferred the title to COMPANY so that COMPANY could use the vehicle. The beneficial owner of the vehicle never changed hands.

To further complicate the matter, the STATE deems purchase price and sales tax information confidential and will not release the information to the party who originally paid the tax.

My questions are:

- 1) When a subsidiary of a company transfers assets, i.e. vehicles, to a subsidiary in Illinois, must the transferee pay sales tax in the New State?
- 2) COMPANY, on the RUT-25 form provided by Illinois, stated that the vehicle was sold for \$1.00 in an arms length transaction, is the taxable amount \$1.00, the fair market value, or the original purchase price?

Thank you for your time and help. I would have attempted to contact an associate rather than yourself as General Counsel, however, no one would give me the necessary information and I could not find other people to contact.

Section 3 of the Illinois Use Tax Act, 35 ILCS 105/3, imposes a tax upon the privilege of using in this State tangible personal property purchased at retail from a retailer, and this includes vehicles. The Illinois Use Tax would apply to purchases of automobiles, trucks and other vehicles at retail and is presently being imposed at a 6.25% rate. There can also be various local Use Taxes that may be applicable depending upon the location of the owner of the vehicle.

When a company that already does business at an Illinois location brings tangible personal property, including vehicles, into Illinois, the company incurs Illinois (and local if applicable) Use Tax liabilities based upon the purchase price. Although 35 ILCS 105/3-70 provides an exemption from Use Tax for property used at least 3 months in another State by a nonresident business prior to its moving to Illinois, that exemption would not apply to COMPANY because COMPANY already does business at an Illinois location. Also, this exemption is not available for vehicles or other tangible personal property that must be titled or registered with the State of Illinois or whose registration with the United States Government must be filed with the State of Illinois.

When COMPANY filed its RUT-25 form it listed \$1.00 as the purchase price in line 1 of Section E. This was inconsistent with the statement typed onto the RUT-25 form by COMPANY personnel that stated that the "Vehicle is being transferred from one state to another, not bought or sold." Even if this statement was not added to the form, the Department is authorized to disregard a "\$1.00 purchase price" and use its best information and judgment to determine the value of the vehicle. In this case the Department determined the value of the vehicle to be \$5,757.00 and assessed tax on this value at the rate of 6.75% which is comprised of 6.25% State and .50% local Use Taxes for the location of CITY, Illinois.

These Use Taxes do provide a credit for taxes paid to other States. The enclosed copy of 86 Ill. Adm. Code 150.310 concerning Exemptions to Avoid Multi-State Taxation exempts in subpart (a)(3) "the use, in this State, of tangible personal property which is acquired outside this State and caused to be brought into this State by a person who has already paid a tax in another state in respect to this sale, purchase or use of such property, to the extent of the amount of such tax properly due and paid in such other state." See also 35 ILCS 105/3-55(d).

Please be informed that it is not always necessary to secure documentation from the original State of licensure that sales or use tax was properly paid to that State. The Department would accept documents from your firm's records that the tax was paid. An example would be a copy of the bill of sale showing that the selling dealer collected tax when COMPANY purchased the vehicle. If you would produce and submit this documentation, the Illinois Department of Revenue will give COMPANY credit for that tax.

However, if such documentation is not produced and submitted, the assessment will stand. It is the responsibility of the taxpayer to produce and submit the documentary evidence necessary to establish an exemption, 35 ILCS 105/12 and 120/7.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at [www.revenue.state.il.us](http://www.revenue.state.il.us). If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

Karl Betz  
Associate Counsel

KWB:msk  
Enc.